Privatization

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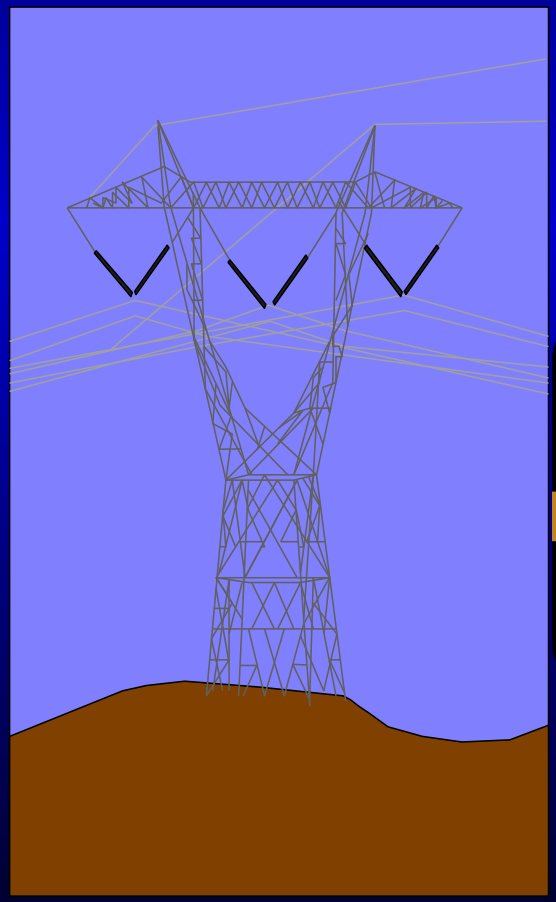


Overview

- Complex
  - Multi-Disciplinary
  - Time-Intensive
- How Does the JAG Community Provide Services to its Clients?
- Where do YOU go for Legal Advice?

Legal Expertise Required

- Real Estate
- Contracting
- Financial Management/Fiscal
- Environmental
- Utility Regulation

The 3 Degrees of Privatization

- Competitive Outsourcing
  - OMB Circular A-76
- Housing Privatization
  - 10 U.S.C. § § 2871-2884
- Utility Systems Privatization
  - 10 U.S.C. § 2688

Competitive Outsourcing (A-76)

- Purchase of Services Traditionally Performed In-House
- No Transfer of Ownership of Government Property
- Primary Purpose = Cost Savings
- May result in In-House Provision of Service

Definition of Privatization

- The process of converting a publicly owned and operated activity into a privately owned and operated activity
- Not necessarily focused on cost savings
- Services WILL be provided by private sector

Housing Privatization

DoD-Wide Effort

- High Level of Congressional Interest
  - Each Department's Implementation Plan Reviewed by DoD and Congress (Oct 98)
- Wide Range of Authorities
  - Implementation Varies Among the Services

Ongoing Housing Projects

- Navy
  - 1997 - Corpus Christi, TX ; Everett, WA (I)
  - 1999 - Everett, WA (II); Kingsville, TX
  - 2000 - South Texas; San Diego, Lemoore, CA, New Orleans, LA, Brunswick, ME
- Marine Corps
  - 1999 - Albany, GA; Camp Pendleton, CA
- Army
  - 1999 - Fort Carson, CO
  - 2000 - Fort Hood, TX

Housing Privatization Authority

- National Defense Authorization Act for 1996
  - 10 U.S.C. § § 2871 – 2885
  - Wide range of authorities
    - Intended to Encourage Experimentation
  - Authority Expires February 10, 2001
    - Agreements entered into prior to that date can be fulfilled

General Authority (10 U.S.C. § 2872)

- Acquisition or Construction by Private Persons
  - of Family Housing Units
  - of Unaccompanied Housing Units
- On or near military installations w/i U.S., territories and possessions
- May or may not involve the transfer of AF owned property

Sources of Housing

- New
  - Build/Lease (10 U.S.C. § 2874)
- Existing
  - currently AF owned (10 U.S.C. § 2878)
    - “appropriate” consideration as determined by SECAF
    - must have suitable preference for military members
  - currently privately owned (10 U.S.C. § 2872)

Market Incentives

- Financial Assistance
  - Loans / Debt (§ 2873) vs. Investment / Equity (§ 2875)
- Loan Guarantees (§ 2873)
- Rental Guarantees (§ 2876)
- Differential Lease Payments (§ 2877)
- Transfer of Government Property (§ 2878)

Equity Financing (10 U.S.C. § 2875)

- Limited partnership interest
  - Limited Liability Corp.
    - not mentioned in statute, but has been used
- Purchase of Stock, Bonds
- Amount of Contribution Limited
  - 1/3 of the capital cost of the project; or
  - 45% of the capital cost if investment includes conveyance of land or facilities
- Collateral Incentive Agreement Required
  - ensures preference for military and families
- Congressional Notification Required

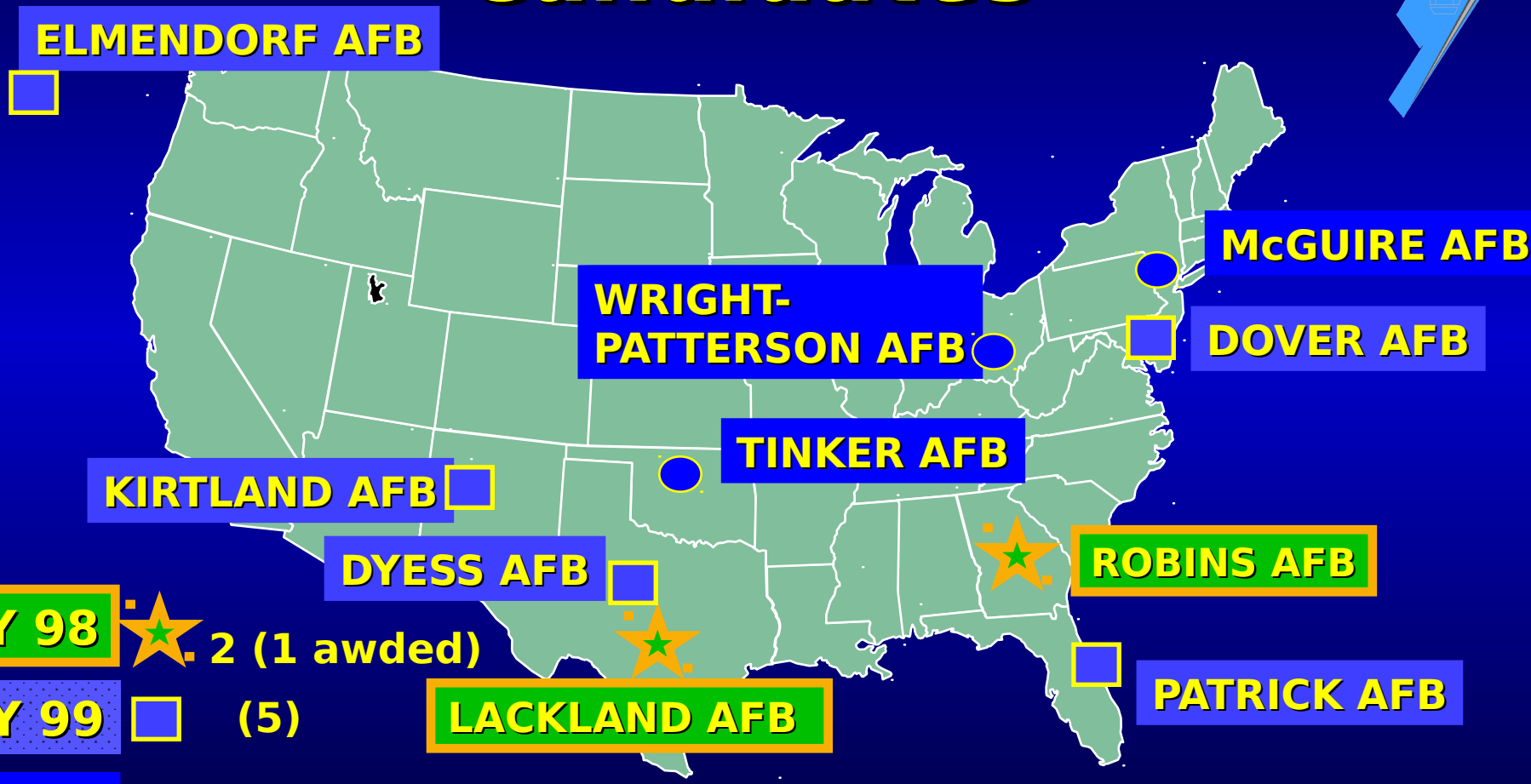
Direct Loans (10 U.S.C. § 2873)

- NOT Grants
  - MUST be repaid
- Terms established by SECAF
  - must protect interests of U.S.
- Can be Primary or Subordinate Loan
- Amount Limited to Budget Authority
    - OMB Scoring

Loan Guarantee (10 U.S.C. § 2873)

- Amount Limited
  - Budget Authority (OMB Scoring)
  - Lesser of:
    - 80% of project value; or
    - outstanding principal of the loan

FY 98 - 00 AF Family Housing Privatization Candidates



ACC

- FY 2001
  - Moody AFB, Offutt AFB
- FY 2002
  - Beale AFB, Nellis AFB (ACC)
- FY 2003
  - Cannon AFB, Shaw AFB
- FY 2005
  - Holloman AFB
- FY 2010
  - Langley AFB

AETC

- 2001
  - Little Rock AFB
- 2002
  - Lackland AFB
  - Sheppard AFB
- 2004
  - Maxwell AFB
- 2005
  - Altus AFB

AFMC

- 2001
  - Hill AFB
- 2002
  - Eglin AFB
- 2003
  - Brooks AFB
- 2005
  - Hanscom AFB

AMC

- 2001
  - Charleston AFB
- 2002
  - Andrews AFB
  - McGuire AFB
- 2003
  - Fairchild AFB

Other Commands

- AFSPC
  - Vandenberg (FY 2001)
- AFSOC
  - Hurlburt (FY 2002)
- PACAF
  - Hickam AFB (FY 2002)
  - Elmendorf AFB (FY 2005)

Stakeholders

- The Military Occupant and Family
- The Wing Commander
- The MAJCOM
- Air Staff
- Secretary of the Air Force

Stakeholder - Military Occupant

Requirement: safe, affordable, comfortable, well maintained housing

Concerns with privatization:

- **Location**
- **Unit size and quality**
- **Security**
- **Community assets/amenities**
- **Good landlord-tenant lease agreement**
- **Avoid Out-of-pocket expense (OOP)**

Stakeholder- The Wing Commander

- Requirement: safe, affordable housing
- Concerns with privatization:
  - Perception of a complete loss of control
  - Must meet housing requirements,
  - Must be as good or better than MFH
  - Must preserve a sense of military community
  - Post-award issues. Needs ongoing interface over quality, security, and tenant concerns. Ensure compliance with agreement

Stakeholder-- The MAJCOM

- Requirement: develop and execute the command's housing program. The 'owner' of each project from inception through initial occupancy.
- Concerns with privatization:
  - Financial soundness of the deal
  - Predictable, executable solicitation process
  - minimize required resources
  - Ability to forecast and program for requirements -- no surprises

Stakeholder- The Air Staff

- Oversee Implementation of AF Policy
  - Overall Management Responsibility
    - Provide Operational Guidance
    - Interim Approval, Coordinate and Guide Projects through SAF Approval

Stakeholder- The AF Secretariat

- Requirements:
  - Establish AF Policy re: execution and administration
    - In compliance with law, Congressional guidance, DoD policy & applicable regulations
      - OMB scoring
      - Congressional reporting requirements
- Concerns:
  - Protection of AF assets and resources

Utility Systems Privatization

Utility Systems Privatization

- DoD-Wide Effort
  - Initially, 2300 candidate systems
  - Currently evaluating 1733
    - Navy -- 751
    - Marines -- 135
    - Army -- 397
    - Air Force -- 450

What are we selling? 10 U.S.C. § 2688

- Equipment, fixtures, structures, and other improvements used for
  - √ generation & supply of electricity
  - √ treatment or supply of water
  - √ collection or treatment of wastewater
  - √ supply of natural gas
  - generation & supply of steam, hot/cold H2O
  - transmission of telecommunications
- Rights of way to Access Purchased Systems

What Are We Buying?

- Utility Service
  - Contract may be with Purchaser of System
  - May be from a third party who must contract with purchaser for right to use system

Scope of Authority

- Can convey fee simple or less
- Use competitive procedures
- Must receive FMV consideration
  - either lump sum or reduced charge for service
- Congressional Notification / 21 Day Wait
  - Demonstrate that:
    - long-term econ. benefit > long-term econ. cost
    - long-term cost reduced

Implementation

- Defense Reform Initiative Directive #9 (Dec 98)
- Defense Reform Initiative Directive #49 (Dec 98)
  - Timeline
    - Sep 00 -- Go / No Go Decision
    - Sep 01 -- All RFPs Complete
    - Sep 03 -- Award of all Privatization Contracts
  - Scope
    - All Installations Worldwide (except BRAC)
    - Exemptions Rare and Must be Approved by SECAF

Execution Plan
Air Force Inventory

Installations	**168**	
Active Duty	**77**	**Major, 11 Minor**
Reserve	**4**	**Major, 8 Minor**
Guard	**3**	**Major, 65 Minor**
Systems	**633**	
Already	**81**	
Exempted	**102**	
Available	**450**	

Execution Plan
USAF Program Targets

Execution Plan Air Force Utility Systems

450 Systems--$91.8M

Pilot projects

- **Scott AFB - wastewater**
- **Edwards AFB - electrical**
- **Langley AFB (Bethel Manor) - electric and na**
- **Hill AFB - industrial wastewater treatment**

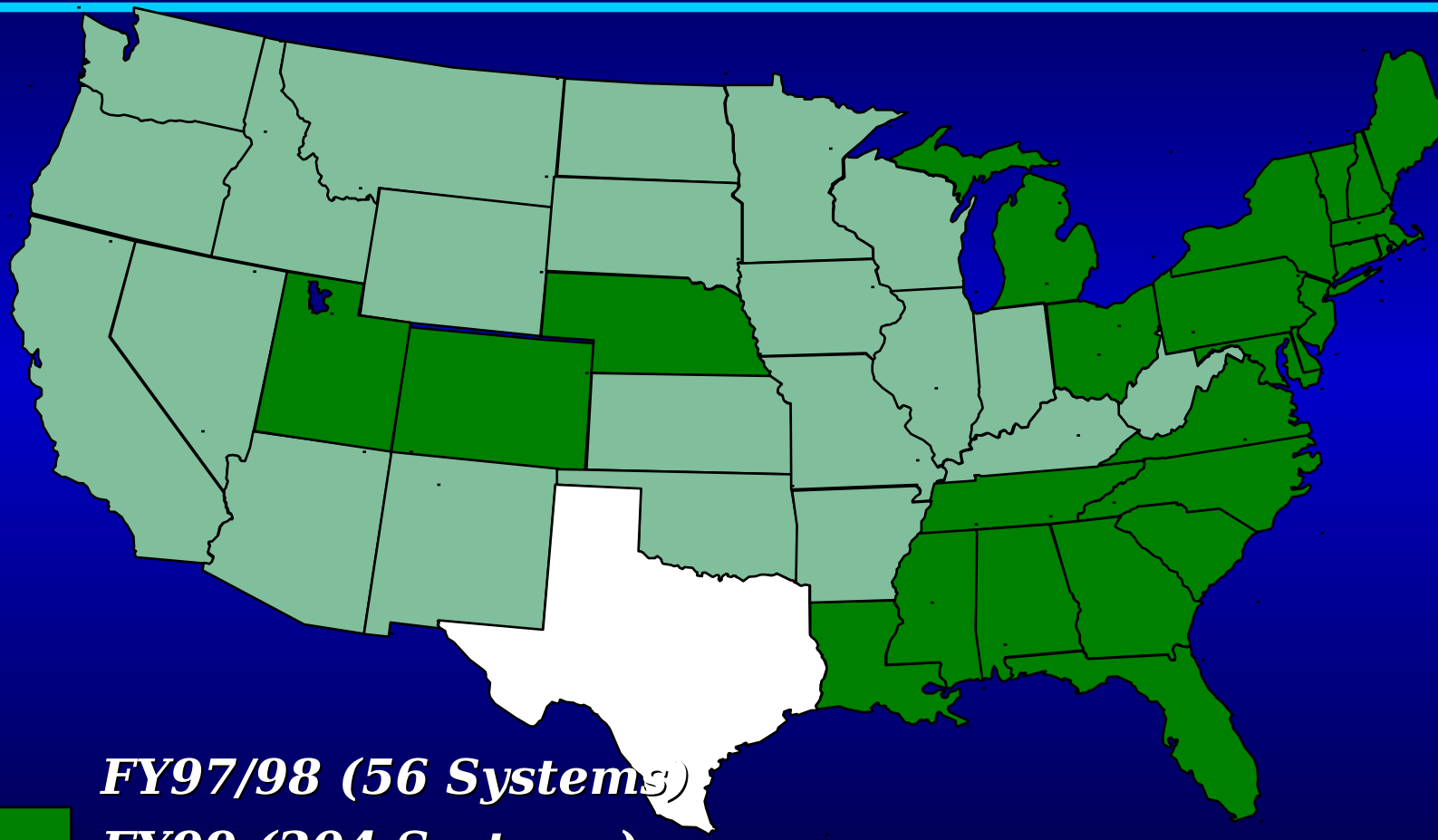
FY98 Program: 55 Systems @ $7.9M

- **Texas Demo: 25 systems**
- **FY98 Program: 30 systems**

FY99 Program: 204 systems @ $42.0M

FY00 Program: 190 systems @ $39.5M

Execution Plan
Utilities Privatization



FY97/98 (56 Systems)

FY99 (204 Systems)

FY00 (190 Systems)

LtCol Armesto, AF/ILEIO, DSN664-4220

Stakeholders

- On-Base Utility Customers
- The Wing Commander
- The MAJCOM
- Air Staff
- Secretary of the Air Force

Stakeholder - Utility Customers

- Requirement: reliable utility service
- Concerns with privatization:
  - lights still go on when you turn the switch
  - outages fixed FAST

Stakeholder - The Wing Commander

- Requirement: reliable utility service
- Concerns with privatization:
  - Perception of a complete loss of control
  - Must be as good or better than existing
  - Post-award issues. Needs ongoing interface over quality, and reliability. Ensure compliance with agreement and reliability of contractor

Stakeholder - The MAJCOM

- Requirement: develop and execute the privatization program. The 'owner' of each project.
- Concerns with privatization:
  - Economics of the Deal
  - Predictable, executable solicitation process
  - minimize required resources
  - Ability to forecast and program for requirements -- no surprises

Stakeholder - The Air Staff

- Oversee Implementation of AF Policy
  - Overall Management Responsibility
    - Provide Operational Guidance
    - Interim Approval
    - Coordinate and Guide Projects through SAF Approval Process

Stakeholder- The AF Secretariat

- Requirements:
  - Establish AF Policy & Guidance re: execution and administration
    - In compliance with law, Congressional guidance, DoD policy & applicable regulations
      - OMB scoring
      - Congressional reporting requirements
  - AF Level Approval
- Concerns:
  - Protection of AF assets and resources

Housing & Utilities: Common Issues

A Delicate Balance

- Transfer of Responsibility = Loss of Some Control
- Provide Incentives to Private Sector to Make Deal Attractive, BUT Protect Interests of the U.S.

The Players

- Engineers
- Acquisition/Contracts
- Financial Managers
- Legal
- Public Affairs

Legal Expertise Required

- Real Estate
- Contracting
- Financial Management/Fiscal
  - Economic Viability;
  - “Protect Interest of the U.S.”
  - Disposition/Availability of Funds
- Environmental
  - NEPA
  - Environmental Baseline Survey
  - CERCLA

Available Legal Resources

- Air Force
  - SJA
  - MAJCOM
  - AFCEE
  - AFCESA
  - AFLSA
  - SAF/GC
- Non-Air Force
  - Attorneys retained by Consultants
  - Attorneys retained by Other Parties
  - Outside Counsel